



## City of Tigard

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of  
Acceleration of Broadband Deployment **WC Docket No. 11-59**  
Expanding the Reach and Reducing the Cost of  
Broadband Deployment by Improving Policies  
Regarding Public Rights of Way and Wireless  
Facilities Siting

### **COMMENTS OF THE CITY OF TIGARD, OREGON**

The City of Tigard, Oregon files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding.<sup>1</sup> The City of Tigard, Oregon is the state’s 12<sup>th</sup> largest city with a population of 48,090. Tigard is located at the junction of Interstate 5, Highway 99W/Pacific Highway and Highway 217 - 11 miles from the Portland core, offering easy access to major interstate transportation routes.

Through these comments, the city of Tigard seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices. The city of Tigard has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests.

This is balanced with laws and policies designed to protect private communications

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<sup>1</sup> This City of Tigard filing focuses primarily on telecommunications and wireless tower siting. The Metropolitan Area Communications Commission (MACC), a consortium of cities and a county in the metro area including Tigard, administers the City’s two cable television franchises. MACC is submitting a response to the NOI on behalf of the consortium. The MACC filing will address cable television and Internet access.

service providers' access to rights-of-way, including our record of timely response to the utility service providers' requests.

There is nothing to suggest that the City's laws and policies have discouraged broadband deployment in the community. To the contrary, a telecommunications company has constructed a state-of-the-art fiber to the premises network throughout most of the City. In addition, there are more than 25 private telecommunications companies currently operating in Tigard. The City has worked with these companies to efficiently obtain permits and other approvals necessary to use the rights-of-way or install facilities on property in the City. As a result, Tigard residents have access to multiple providers of telecommunications and broadband services. By adopting new rules in this area, the Commission could disrupt the partnership which currently exists between Tigard and the private communication service providers, at substantial cost to local taxpayers and to the local economy.

In response to the NOI, the *City of Tigard* provides the following information:

- I. Application Procedures, Forms, Substantive Requirements, and Charges.***  
*The Commission asks the timeliness and ease of the permitting process, including whether all necessary application procedures, forms, substantive requirements, and charges are readily available, and updates to reflect current communications technologies.*

The city of Tigard regulates right-of-way management and wireless facility placement procedures in the Tigard Municipal Code (TMC) Sections 15 and 18. The TMC rules, as well as procedures, forms and charges are easily accessible on the internet at [www.tigard-or.gov](http://www.tigard-or.gov) and at the City Hall complex.

In 2006 and 2008, the City amended TMC Section 15 to establish a comprehensive right-of-way management ordinance with the express purpose of ensuring reasonable access to the rights-of-way on a competitively neutral basis. The City worked to design the ordinance so that no barriers to market entry were created.

The City also intended that the ordinance would reflect changes in communications technologies by including definitions that are technology-neutral, which helps ensure that as new technologies develop, service providers have equal access to the rights-of-way under the same terms and conditions as providers of similar services delivered by existing technologies.

The City requires communications providers (as well as all other utilities, such as gas, electric, and City-owned water and sewer systems) to obtain a franchise prior to installing facilities in the rights-of-way. The City has developed a standard franchise agreement that the City Council *must* grant to any qualified applicant seeking such a franchise. The standard franchise has a ten year term. This process results in simple, efficient and long-term access to the City rights-of-way on a nondiscriminatory basis.

The City also requires right-of-way construction permits prior to installation of facilities in the rights-of-way. The permit process is designed to assist the provider in installation and maintenance of facilities, protect public safety during construction and assure restoration of the site following completion of the work. The permit application is two pages and readily available online. The city has not denied a right-of-way permit in the last ten years.

Collocation of wireless facilities is another area addressed by city's permitting process. A collocation permit requires completing a one-page application. Decisions on these applications usually take less three days. Since 2007, the city of Tigard has approved all 14 collocation requests that have been submitted. Thirteen of the requests were reviewed and approved in less than seven days; ten of the applications were approved in less than 24 hours. A collocation permit application has never been denied.

With respect to applications for wireless tower siting other than collocations, the City processes those applications within 120 days, unless that timeline is extended by agreement of the applicant, as required by state law.

As the above information indicates, the FCC's Shot Clock Ruling has not impacted the City's zoning processes. The City did not have any issues with delays for failure to approve these applications prior to the Ruling, and continues to promptly do so.

**II. *Sources of Delays.***

*The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.*

As noted above, the City's approval process is typically within 24 hours to seven days for collocation applications. Historically, our records show delays were caused by the applicant submitting an incomplete collocation application. To the best of our knowledge, there has never been a delay which arose from a factor related to city policies or procedures.

**III. *Improvements.***

*The Commission asks whether there are particular practices that can improve processing.*

The city of Tigard has implemented a number of practices that have improved the process. For instance, the city code and application forms are now online. This feature expedites the delivery of information and filing of required documents. City staff assigns one person to communicate directly with the applicant and assist the applicant in processing any work requiring a permit. This hands-on approach assists the applicant and the city in expediting the approval process.

**IV. *Permitting Charges.***

*The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees."*

The City has established fees associated with franchise applications and use of the rights-of-way, right-of-way construction permit fees, and land use application fees. As stated above, a telecommunications provider installing facilities in the City's rights-of-way must obtain a franchise from the City. The city of Tigard has set a Telecommunications Franchise Application Fee at \$2,000. This fee is non-refundable and based on the staff time required to process the application, and inspect the location before, during and after the work. For example, the fee amount is calculated on the hourly rate for the City's Finance Director (who reviews all applications, negotiates terms, and prepares an agreement for approval by the Council), adds 22 percent for materials and services necessary to support this work, and then adds an additional 15 percent for City administrative overhead (City Manager, Human resources, accounting, etc.). The resulting hourly rate is then multiplied by an estimated number of hours necessary to process the average telecommunications franchise.

All companies with facilities in the City rights-of-way, including City-owned utilities and providers of gas, electric, cable and telecommunications services, are subject to a franchise or right-of-way usage fee that is the greater of (1) the applicable percentage of gross revenues or (2) the linear foot fee. The City currently does not receive franchise fees or right-of-way usage fees from any wireless providers for wireless services. The City currently does not receive any revenue from the provision of broadband services to customers in the City.

State law limits the fee the City may charge incumbent local exchange providers for use of the rights-of-way. Though this law does not apply to competitive providers,



the City has set the percentage-based fee and per foot fee at the same rate for all telecommunications providers subject to the right-of-way usage fee.

In the last five years, staff has never had a telecommunication company issue a formal complaint about fees and charges. Telecommunication companies, in fact, have commented about the ease in accessing the City right-of-way.

Right-of-way permits are required for any above ground or underground installation in the public right-of-way. The City's right-of-way permit fee is \$300.00. This fee is designed to cover the City's costs for processing permit applications (including staff time and computer programs used for permitting), meeting with applicants as necessary to discuss the project, and inspection of the applicant's work and restoration. In many cases this fee does not cover all costs incurred by the City.

The charges are important because the fees generated are used to directly provide the services required to monitor the construction activities and ensure protection of the public infrastructure. While there is no way to avoid the impacts of work in the rights-of-way—and the associated short-term and long-term costs—the City has a fiduciary duty to safeguard the public's investment in its streets and other infrastructure. The only effective way to do that is through the permitting process, and the review and inspection that process entails. The permitting process also helps the City discharge its duty to preserve and protect public safety by ensuring proper safeguards are used during work.

The City's experience is that wireless facilities are not located in the rights-of-way, but rather go through the land use process. The City's land use application fees vary depending on the proposed project. The City has not charged an application fee for collocations.

**V. *Local Policy Objectives.***

*The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.*

The city’s policies are designed to do the following: (1) facilitate the responsible deployment of services; (2) make the services broadly available; (3) ensure public safety; (4) avoid traffic disruption; (5) maintain and repair roadways; (6) prevent public disruption and damage to abutting property; (7) minimize accelerated deterioration to roads that accompanies utility street cuts; (8) satisfy aesthetic, environmental, or historic preservation concerns; (9) avoid damage to the property of others; and (10) obtain fair compensation for use of public property.

The city of Tigard is also very aware of the need for private telecommunication companies to move quickly to maintain a competitive position in the market. It is the City’s practice to respond quickly and provide easy access to the rights-of-way. Our record of facility siting and application turn-around times (typically 24 hours to 7 days) shows our commitment to supporting the private telecommunication companies’ needs while controlling and regulating local rights-of-way.

**VI. *Possible Commission Actions***

*Finally, the Commission asks what actions the Commission might take in this area.*

As noted above, the City of Tigard strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact- and location-specific matters, which turn on local street design and engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our

community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

### **CONCLUSION**

Tigard believes Congress made clear in the Communications Act Section 253 (47 USC Section 253(c)) that local governments retain the right to manage their rights-of-way and obtain reasonable compensation for use of same. Similarly, Section 332(c)(7) retains local zoning authority over the siting of wireless devices. The FCC has no jurisdiction to preempt local zoning laws or rights-of-way regulations or to set rights-of-way compensation.

Tigard manages the rights-of-way on a “competitively neutral and nondiscriminatory basis.” There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,



City of Tigard, Oregon  
By: Craig B. Prosser  
City Manager  
13125 SW Hall Boulevard  
Tigard, OR 97223